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Tan Ah Kek & Anor v Wong Thang Song & Anor

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(NCVC)(W)-2609–12 OF 2013
ALIZATUL KHAIR, ABDUL AZIZ ABDUL RAHIM AND DAVID WONG JJCA
24 FEBRUARY 2016

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Contract — Illegality — Pleadings — Parties entered into lease agreement — Leasee given permission under agreement to build steel structure factory for commercial use on land — Leasee to comply with all regulations prescribed by relevant authorities for construction — Condition for land use was 'agriculture' — Registered owners must apply for conversion of use of land from agriculture to industry/commercial — Application for conversion refused and permission from relevant authorities never obtained — Whether agreement void for illegality

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The appellants, the registered owners of a piece of land, had entered into a lease agreement ('the said agreement') with the respondents. Under the said agreement the respondents were allowed to occupy the said land for a monthly rental of RM1,800 which would be revised every three years. Clause 5.3 of the said agreement allowed the respondents to build a steel structure factory ('the factory') for commercial use on the said land; but the respondents have to comply with all the regulations prescribed by the relevant authorities in relation to the construction. Under cl 5.4 of the said agreement the respondents were allowed to sublet the said land to a third party for a period not exceeding 16 years. The condition for the land use at the material time was 'agriculture'. Recital C of the said agreement stipulates the obligation of the appellants as the registered owners of the said land to apply, at the appellants own cost, to the relevant authorities for the conversion of the use of the said land from agriculture to industry/commercial. The appellants commenced applications with the relevant authorities to convert the category of land use of the said land from agriculture to industry/commercial. At the same time the respondents proceeded to build the factory on the said land. The appellants' application for conversion was refused and the permission from the relevant authorities was never obtained. The reason being the factory built by the respondents on the said land had encroached onto the neighbouring land. Disputes arose between the parties where it was alleged that the respondents failed to deliver a copy of sublease agreement to the appellants for verification before execution; to pay the rental on the said land; construction of the factory on the said land without obtaining approval from the authorities and without certificate of fitness for occupation. These alleged complaints by the appellants were acknowledged and noted by the judicial commissioner ('JC'). Illegality of the contract was not

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pleaded. It was only raised at the end of the trial. However, the JC rejected the submission resulting in the dismissal of the appellants' claim. Hence, the present appeal. The issues that arose were whether the illegality issue which was not pleaded ought to be decided in favour of the appellants and whether the said agreement was void for illegality.

Held, allowing the appeal and setting aside the decision of the High Court:

(1) The court may take cognisance of an illegality in an act or contract even if the illegality was not pleaded. The appellants were not attempting to enforce the contract in the sense that the appellants wanted the respondents to fulfill their obligations under the said agreement. Rather, the appellants were seeking an order to have the contract nullified because it was void under s 24 of the Contracts Act 1950. Under s 52 of the National Land Code, land categorised as agricultural use will be subject to the implied conditions as prescribed by s 115 of the NLC. Section 115(1)(a) of the NLC states that no building shall be erected on the land other than a building to be used for agricultural purposes as defined in sub-s (4) of the same section. There was no dispute that the factory that was constructed by the respondents on the said land does not fulfill the condition under sub-s (4) (see paras 12–13).

(2) The object of the said agreement was to enable the respondents to build a factory on the said land and that the respondents can sublet to third party. Under the existing express condition of category of land use of the said land this objective could not have been fulfilled and the construction of the factory on the said land could not be done without the condition of land use being changed. Though the JC noted this in his judgment, he failed to sufficiently and adequately take this into consideration. The JC also failed, having acknowledged the fact that the respondents had commenced construction of the factory on the said land before the appellants obtained the permission to convert the said land use from agriculture to industry, to take into consideration that the respondents were aware that the category of land use was agriculture (see para 15).

(3) The JC fell into error when he ruled that it was unfair on the respondents for the appellants to raise the issue of illegality some six years after the execution of the agreement and after the respondents had expended money on the said land by building the factory. In deciding the way he did, the JC missed the point of law entirely which was that the court was duty bound to take notice of the illegality whether or not it was pleaded if the facts showing the illegality are before the court. The duty of the court was to give effect to the law; not to be a party to the enforcement of an illegal contract. Whatever the motive of the appellants in complaining only six years after the execution of the said agreement was irrelevant.

What was illegal remained illegal whether the complaint was taken early upon discovery of the illegality or very much later (see para 16).

[Bahasa Malaysia summary

Perayu-perayu, pemilik berdaftar sebidang tanah, telah memasuki satu perjanjian pajakan ('perjanjian tersebut') dengan responden-responden. Di bawah perjanjian tersebut, responden-responden dibenarkan menghuni tanah tersebut dengan sewa bulanan RM1,800 yang akan disemak setiap tiga tahun. Klausa 5.3 perjanjian tersebut membenarkan responden-responden membina satu kilang berstruktur besi ('kilang') bagi penggunaan komersil tanah; tetapi responden perlu mematuhi semua peraturan yang dinyatakan oleh pihak berkuasa yang relevan berkenaan pembinaan. Di bawah klausa 5.4 perjanjian tersebut, responden-responden dibenarkan menyewakan tanah tersebut kepada pihak ketiga bagi tempoh tidak melebihi 16 tahun. Syarat penggunaan tanah pada masa itu adalah 'pertanian'. Resital C perjanjian memperuntukkan kewajipan perayu-perayu sebagai pemilik berdaftar tanah, untuk memohon, dengan kos perayu sendiri, kepada pihak berkuasa yang relevan bagi konversi penggunaan tanah daripada pertanian kepada industri/komersil. Perayu-perayu memulakan permohonan kepada pihak berkuasa yang relevan untuk menukar kategori penggunaan tanah daripada pertanian kepada industri/komersil. Pada masa yang sama, responden-responden meneruskan membina kilang atas tanah tersebut. Permohonan perayu-perayu bagi konversi ditolak dan kebenaran daripada pihak berkuasa yang relevan tidak diperolehi. Alasannya adalah bahawa kilang yang dibina oleh responden-responden atas tanah tersebut telah mencerobohi tanah jiran. Pertikaian-pertikaian timbul antara pihak-pihak di mana didakwa bahawa responden-responden gagal menyerahkan sesalinan perjanjian sewaan kepada perayu-perayu bagi pengesahan sebelum pelaksanaan; untuk membayar sewa tanah tersebut; pembinaan kilang atas tanah tersebut tidak mendapat kebenaran pihak berkuasa dan tanpa perakuan kelayakan. Aduan-aduan oleh perayu-perayu ini diperakui oleh pesuruhjaya kehakiman ('PK'). Ketaksahan kontrak tidak diplidkan. Ini hanya dibangkitkan di penutup perbicaraan. Walau bagaimanapun, PK menolak hujahan tersebut, membawa kepada penolakan tuntutan perayu-perayu. Oleh itu, rayuan ini. Isu-isu yang berbangkit adalah sama ada isu ketaksahan, yang tidak diplidkan, sewajarnya diputuskan berpihak kepada perayu-perayu dan sama ada perjanjian tersebut tidak sah akibat ketaksahan.

Diputuskan, membenarkan rayuan dan mengetepikan keputusan Mahkamah Tinggi:

(1) Mahkamah boleh mengambil perhatian akan ketaksahan dalam satu-satu perlakuan atau kontrak jika pun ketaksahan tersebut tidak diplidkan. Perayu-perayu tidak cuba menguatkuasakan kontrak dalam erti kata perayu-perayu menghajati agar responden-responden memenuhi

kewajipan mereka di bawah perjanjian. Perayu-perayu sudah tentu memohon satu perintah untuk membatalkan kontrak kerana ia batal di bawah s 24 Akta Kontrak 1950. Di bawah s 52 Kanun Tanah Negara ('KTN'), tanah yang dikategorikan sebagai penggunaan pertanian tertakluk kepada syarat-syarat tersirat yang dinyatakan oleh s 115 KTN. Seksyen 115(1)(a) KTN menyatakan bahawa bangunan tidak boleh didirikan atas tanah tersebut melainkan bangunan didirikan untuk digunakan bagi tujuan pertanian seperti yang digariskan dalam sub-s (4) seksyen yang sama. Tiada pertikaian bahawa kilang yang dibina oleh responden-responden atas tanah tersebut tidak memenuhi syarat di bawah sub-s (4) (lihat perenggan 12–13).

(2) Tujuan perjanjian tersebut adalah untuk membolehkan responden membina kilang atas tanah tersebut dan agar responden-responden boleh menyewakan kepada pihak ketiga. Di bawah syarat nyata yang ada bagi kategori penggunaan tanah tersebut, objektif ini tidak boleh dipenuhi dan pembinaan kilang atas tanah tersebut tidak boleh dipenuhi tanpa penukaran syarat penggunaan tanah. Walaupun ini diperakui oleh PK dalam penghakiman beliau, beliau gagal mempertimbangkan ini secukup dan sewajarnya. Pesuruhjaya kehakiman juga gagal, setelah memperakui fakta bahawa responden-responden telah memulakan pembinaan kilang atas tanah tersebut sebelum perayu-perayu memperoleh kebenaran menukar penggunaan tanah daripada pertanian kepada industri, untuk mempertimbangkan bahawa responden-responden sedar bahawa kategori penggunaan tanah tersebut adalah pertanian (lihat perenggan 15).

(3) Pesuruhjaya kehakiman terkhilaf dalam memutuskan bahawa tidak adil buat responden-responden jika perayu-perayu membangkitkan isu ketaksahan hampir enam tahun selepas pelaksanaan perjanjian tersebut dan selepas responden-responden telah melaburkan wang atas tanah tersebut dengan membina kilang. Dalam memutuskan sebegitu, PK terlepas pandang sepenuhnya fakta undang-undang iaitu mahkamah bertanggungjawab mengambil notis ketaksahan sama ada ia diplidkan atau tidak sekiranya fakta-fakta menunjukkan ketaksahkan di hadapan mahkamah. Tanggungjawab mahkamah adalah memberi kesan pada undang-undang; bukan menjadi pihak dalam pelaksanaan kontrak yang tidak sah. Apa pun motif perayu-perayu dalam membuat aduan hanya selepas enam tahun pelaksaan perjanjian, adalah tidak relevan. Apa yang tidak sah kekal tidak sah sama ada aduan dibuat lama sebelum atau lama selepas menyedari ketaksahan (lihat perenggan 16).]

Notes

For a case on pleadings, see 3(4) *Mallal's Digest* (5th Ed, 2015) para 5768.

Cases referred to

Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd & Anor [1989] 1 MLJ 457; [1989] 1 CLJ Rep 1, PC (refd)

Su Wee Lip @ Phillip Su v Hj Lassim Abdul Rahman [2009] 1 MLJ 580, CA (distd)

Legislation referred to

Contracts Act 1950 s 24

National Land Code ss 52, 115, 115(1)(a), (4)

Appeal from: Writ Summons No 22NCVC-991 of 2001 (High Court, Shah Alam)

V Rajadevan (Rajadevan & Assoc) for the appellants.

S Many (S Many & Co) for the respondents.

Abdul Aziz Abdul Rahim JCA (delivering judgment of the court):

[1] The appellants in this appeal were the plaintiffs before the High Court. The appellants' appeal is against the decision of the learned Hashim bin Hamzah JC who dismissed the appellants' claim for vacant possession, mesne profits till the surrender of vacation possession, general damages and cost of demolition of the structure built by the respondents.

[2] The appellants are the registered owners of a piece of land known as HS(M) 619 No PT Bukit Raja, Selangor ('the said land'). On 1 December 2006 the appellants entered into a lease agreement ('the said agreement') with the respondents. Under the said agreement the respondents were allowed to occupy the said land for a period up to 31 October 2024 for a monthly rental of RM1,800 which would be revised every three years.

[3] Clause 5.3 of the said agreement allows the respondents to build a steel structure factory ('the factory') for commercial use on the said land; but the respondents have to comply with all the regulations prescribed by the relevant authorities in relation to the construction. Under cl 5.4 of the said agreement the respondents were allowed to sublet the said land to a third party for a period not exceeding 16 years.

[4] The condition for the land use at the material time was 'agriculture'. Recital C of the said agreement stipulates the obligation of the appellants as the registered owners of the said land to apply, at the appellants own cost, to the relevant authorities for the conversion of the use of the said land from agriculture to industry/commercial. The appellants commenced applications with the relevant authorities to convert the category of land use of the said land

from agriculture to industry/commercial. At the same time the respondents proceeded to build the factory on the said land.

[5] The appellants' application for conversion was refused and the permission from the relevant authorities was never obtained. The reason being the factory built by the respondents on the said land had encroached onto the neighbouring land.

[6] Six years after the execution of the said agreement, disputes arose between the parties. Some of the disputes were addressed by SP1 in his witness's statements and these include amongst others failure of the respondents to deliver a copy of sublease agreement to the appellants for verification before execution, failure of the respondents to pay the rental on the said land, construction of the factory on the said land without obtaining approval from the authorities and without certificate of fitness for occupation and the construction of a concrete dividing wall bordering the neighbouring land which had encroached onto the neighbouring land resulting in nuisance because of improper irrigation system and therefore had breached cl 5.5 of the said agreement. These alleged complaints by the appellants were acknowledged and noted by the learned judicial commissioner in para 4 of his written judgment dated 7 November 2013.

[7] In his submission before the learned judicial commissioner, learned counsel for the appellants submitted, inter alia, that the said agreement contravenes s 24 of the Contracts Act 1950 because the category of land use was 'agriculture' and therefore the construction of factory on the said land was not permitted. The learned judicial commissioner appraised the submission in his grounds of judgment as follows:

> 7. Di dalam hujah Plaintif, pihak Plaintif membangkitkan isu bahawa daripada keterangan saksi-saksi adalah jelas bahawa perjanjian yang dimasuki oleh pihak Plaintif dan Defendan adalah bertentangan dengan undang-undang dan berlawanan dengan Seksyen 24 Akta Kontrak 1970. Ini kerana kategori kegunaan tanah tersebut adalah 'Pertanian' dan oleh itu mendirikan sebuah kilang adalah tidak dibenarkan di atas tanah tersebut. Pihak Plaintif berhujah lagi bahawa kedua-dua pihak tahu bahawa kategori tanah tersebut adalah 'Pertanian' dan kedua-dua pihak juga mengetahui bahawa pihak Plaintif akan memohon untuk penukaran kategori tanah tersebut ke 'Perusahaan' tetapi sebelum kebenaran penukaran kategori tanah tersebut diperolehi, pihak Defendan telah mendirikan kilang tersebut tanpa memohon kebenaran daripada pihak berkuasa. *Pihak Plaintif merujuk kepada kes Hee Cheng v Krishnan* [1955] 1 MLJ 103. Di dalam kes tersebut telah diputuskan bahawa:
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> > ... In the first place, I am satisfied that on a true construction of the Plaint and on the view I take of the evidence as to what was, if the plaintiff's story be true, the intent of the parties, the alleged contract was in truth and in fact an attempt to sell and to purchase the defendant's rights under the Temporary Occupation

Licence. As such, it was in my opinion, unlawful by reason of s 24 of the Contracts Ordinance as being of such a nature that if permitted it would defeat the provisions of any law and that it is therefore by reason of that Section void.

The land in question is State land. Dealings in State land, other than mining land and land in Malay Reservation, are subject to the provisions of the Land Code and any subsidiary legislation enacted under it. The licence with which I am here concerned was issued under reg 40 of the Land Rules 1930 and by r 41 of these Rules it is stated in terms 'No licence for the temporary occupation of State land shall be transferable'. That is the provision of the law which would be defeated if effect were given to a contract of this nature ...

8. Berdasarkan fakta itu, pihak Plaintif berhujah bahawa Seksyen 66 Akta Kontrak terpakai di mana peruntukan tersebut menyatakan bahawa 'When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it'. Oleh itu pihak Plaintif memohon supaya pihak-pihak di kembalikan ke kedudukan asal, pihak Plaintif diberi milikan kosong dan tiada perintah dibuat atas sewa yang tidak dibayar dan kos ditanggung oleh pihak-pihak.

[8] Illegality of the contract was not pleaded. It was only raised at the end of the trial. However the learned judicial commissioner rejected the submission resulting in the dismissal of the appellants' claim. This is the main crux of the appellants' appeal.

[9] Before us, learned counsel for the respondents repeated the submission made before the learned judicial commissioner which is that the issue of illegality of the said agreement was never pleaded and the appellants had represented to the respondents that they had made an application to convert the land from agriculture to industrial land. The respondents also submitted that the appellants should not be allowed to benefit from their own failure to get permission to convert the land use after the respondents had expended a substantial sum of money to build the steel factory on the said land.

[10] It is pertinent to note that in dismissing the appellants' claim the learned judicial commissioner had found that the said agreement was executed after the date of the appellants' application for change of category of land use; and by relying on the decision of this court in *Su Wee Lip @ Phillip Su v Hj Lassim Abdul Rahman* [2009] 1 MLJ 580. The learned judicial commissioner said in paras 11 and 12 of his judgment as follows:

11 Perjanjian yang ditandatangani oleh pihak-pihak adalah jelas berlawanan dengan peruntukan undang-undang yang sedia ada. Walau bagaimanapun daripada keterangan dan juga dokumen berbentuk tiga pucuk surat bertarikh 05.06.2006, 28.07.2006 dan 19.09.2006 (di dalam Ikatan B mukasurat 23 ke 27) adalah jelas bahawa perjanjian pajakan bagi Hartanah tersebut antara Plaintif dan

Defendan pada 01.12.2006 adalah dibuat selepas daripada tarikh permohonan tukar kategori tanah oleh pihak Plaintif. Berdasarkan Recital C, perjanjian tersebut, pihak Plaintif hendaklah memohon untuk penukaran kategori tanah tersebut atas pembiayaan sendiri di mana beliau gagal berbuat demikian disebabkan itulah kes ini difailkan di Mahkamah. Di dalam kes Mahkamah Rayuan *Su Wee Lip @ Phillip Su v Hj Lassim Abdul Rahman* [2009] 1 MLJ 580, YA Gopal Sri Ram di dalam keputusannya menyatakan bahawa:

> ... If we were to accede to the defendant's contention it would mean that he would be able to escape from his obligations under the October deed through his own default. It is a settled principle of general application that a person should not be permitted to take advantage of his own wrong. When applied in the sphere of contract law it expresses itself in the proposition that a guilty party ought not to be permitted to take advantage of his own breach of the contract. In *Gimstern Corporation (M) Sdn Bhd & Anor v Global Insurance Co Sdn Bhd* [1987] 1 MLJ 302 Wan Hamzah SCJ when delivering the judgment of the Supreme Court said this:
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> > The rule is that if a stipulation in a contract be that the contract shall be void on the happening of an event which one or either of the parties can by his own act or omission bring about, then the party who by his own act or omission brings that event about, cannot be permitted either to insist upon the stipulation himself or to compel the other party who is blameless, to insist upon it, because to permit the blameable party to do either would be to permit him to take advantage of his own wrong to put an end to the contract, vide the judgment of Lord Atkinson in *New Zealand Shipping Company Ltd v SDAECD France* [1919] AC 1.
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> [11] In our judgment the principle enunciated by Wan Hamzah SCJ applies with full force to the facts of this case. Here it is the defendant who by his own omission sought to bring an end to the October deed with the plaintiff being blameless. To permit him to do that would be to enable him to take advantage of his own wrong.

12 Adalah tidak adil setelah enam tahun pihak Defendan mendirikan kilang tersebut dan menyewakan kilang tersebut kepada pihak ketiga baru kini pihak Plaintif menimbulkan isu kesahihan perjanjian tersebut padahal mengikut perjanjian, pihak Plaintif yang sepatutnya mengambil langkah untuk mendapatkan kebenaran untuk penukaran kategori tanah tersebut. Oleh yang demikian Mahkamah ini menolak tuntutan Plaintif begitu juga Tuntutan Balas Defendan terhadap Plaintif juga ditolak. Mahkamah juga memerintahkan pihak-pihak menanggung kos masing-masing.

OUR DECISION

[11] Though in their pleadings the appellants raised several issues that we have alluded to above, the learned judicial commissioner had decided this case only on one issue that is illegality. Therefore in this appeal, and as submitted by the appellants, the issue that requires our decision is whether the illegality issue

which was not pleaded ought to be decided in favour of the appellants and that the learned judicial commissioner ought to have found that the said agreement void for illegality.

[12] It is settled law that the court may take cognisance of an illegality in an act or contract even if the illegality is not pleaded. Learned counsel for the appellants had rightly referred to us the Privy Council case of *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd & Anor* [1989] 1 MLJ 457; [1989] 1 CLJ Rep 1 where the court states the principle as follows:

> ... it is well established as a general principle that the illegality of an agreement sued upon is a matter of which the court is obliged, once it is appraised of the facts tending to support the suggestion, to take notice ex proprio motu and even though not pleaded (see eg *Edler v Auerbach* [1950] 1 KB 359) for clearly, no court could knowingly be a party to the enforcement of an unlawful agreement.

[13] We observe that in this case the appellants were not attempting to enforce the contract in the sense that the appellants wanted the respondents to fulfill their obligations under the said agreement. Rather, the appellants were seeking an order to have the contract nullified because it was void under s 24 of the Contracts Act 1950. The voidability of the contract happens in this way: Under s 52 of the NLC 1965 land categorised as agricultural use will be subject to the implied conditions as prescribed by s 115 of the NLC 1965. Section 115(1)(a) of the NLC 1965 states that no building shall be erected on the land other than a building to be used for agricultural purposes as defined in sub-s (4) of the same section. There is no dispute that the factory that was constructed by the respondents on the said land does not fulfill the condition under sub-s (4).

[14] It is also not in dispute that both the appellants and the respondents knew, at the time of the execution of the said agreement, the condition of land use of the said land was agriculture; and that before the appellants could obtain permission from the relevant authorities to convert the land use to industry/building the respondents had proceeded with the construction of the factory on the said land for industrial purposes. Therefore, it was submitted that this was clearly in contravention of the implied conditions in the NLC as to the use of the said land and therefore is void.

[15] We agree with the submission by learned counsel for the appellants that the object of the said agreement was to enable the respondents to build a factory on the said land and that the respondents can sublet to third party. Under the existing express condition of category of land use of the said land this objective could not have been fulfilled and the construction of the factory on the said land could not be done without the condition of land use being changed. Though the learned judicial commissioner had noted this in his judgment he had failed to sufficiently and adequately take this into

consideration. The learned judicial commissioner also failed, having acknowledged the fact that the respondents had commenced construction of the factory on the said land before the appellants obtained the permission to convert the said land use from agriculture to industry, to take into consideration that the respondents were aware that the category of land use was agriculture.

[16] In our view the learned judicial commissioner fell into error when he ruled that it was unfair on the respondents for the appellants to raise the issue of illegality some six years after the execution of the agreement and after the respondents had expended money on the said land by building the factory. In deciding the way he did the learned judicial commissioner had missed the point of law entirely which is that the court is duty bound to take notice of the illegality whether or not it is pleaded if the facts showing the illegality are before the court. The duty of the court is to give effect to the law; not to be a party to the enforcement of an illegal contract. From the passage of the judgment of the learned judicial commissioner that we have quoted above, it is apparent that the learned judicial commissioner was concerned with the injustice that would be caused to the respondents if the appellants' argument on illegality is acceded to. The injustice in the opinion of the learned judicial commissioner is that the appellants had allowed the respondents to expend a substantial sum of money to build the factory on the said land then took about six years to complain to the court about the illegality. In our view whatever the motive of the appellants in complaining only six years after the execution of the said agreement is irrelevant. What is illegal remains illegal whether the complaint is taken early upon discovery of the illegality or very much later.

[17] It is to be observed that the respondents are not entirely blameless in this case. Knowing that the said land use was agriculture and would require approval to convert it for industrial or commercial use, the respondents, nevertheless, went ahead to build the factory on the said land in contravention of the condition of land use and therefore were in breach of s 115 of the NLC. To compound the matter, there is no evidence to show that the respondents had obtained approval for the construction of the factory from the relevant local planning authority. The requirement for the conversion of land use for the purpose of the said agreement between the appellants and the respondents had been clearly spelt out in the said agreement. Therefore, the respondents cannot deny such knowledge. The respondents had taken a big risk in having the building of the factory not approved by the relevant authorities as well as being in breach of the condition of land use for not obtaining prior approval for conversion of land use of the said land to industry or commercial use.

[18] The case of *Su Wee Lip @ Phillip Su* relied by the learned judicial commissioner to support his decision is distinguishable on the facts. In that

case there was no issue of illegality. That case involved land deals by the defendant and the plaintiff and the revocation of the power of attorney given by the owners of the land to the defendant to enable the defendant to deal with the land. In that case the defendant failed to deliver the land titles to the plaintiff after having received part of the purchase price from the plaintiff. The defendant then tried to challenge the revocation of the power of attorney given to him as bad even though he had assured and given representation to the plaintiff that he would not challenge the revocation. On the facts of the case the court decided that the defendant should not be permitted to take advantage of his own wrong and thereby escape his obligation under a deed that had been entered into between the plaintiff and the plaintiff's partner and the defendant for the sale of the lands.

[19] For the above reasons, we allow the appeal and set aside the decision of the High Court and enter judgment for the appellants as per prayer 15(a) p 21 of the appeal records (Vol 1), and for vacant possession to be delivered 90 days from the date of this judgment (7 April 2014). We also order each party to bear their own costs and the deposit refunded.

Appeal allowed and decision of the High Court set aside.

Reported by Afiq Mohamad